IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10736 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SUDHABEN @ SALAMABEN W/O BABU IMAMUDDIN SHAIKH

Versus

COMMISSIONER OF POLICE

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Appearance:

MR MIG MANSURI for MR RR MARSHALL for Petitioner

MR UDAI R. BHATT, AGP for respondents

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

1. The petitioner has challenged her detention order passed under the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) by way of this petition under Article 226 of the Constitution of India. Police Commissioner, Surat City, in exercise of powers

conferred upon him by Sec. 3(1) of the PASA Act, passed the order of detention against the petitioner on 29th of June, 2000. The petitioner was detained in pursuance of this order from 1st of July, 2000. This detention order is challenged by the petitioner in this petition.

2. The grounds of detention placed on record reveals that two crimes were registered against the petitioner under the Bombay Prohibition Act on 3rd October, 1999 and 1st of April, 2000 respectively. The charges were under Sec. 66(1)(B), 65(E) (F) (C) and 81 of the Bombay Prohibition Act. The crime came to be registered before the Prohibition Police Station, East Surat. As per the prosecution case, the petitioner was indulged in preparing illegal liquor. The detaining authority has taken into consideration the investigation of aforesaid two crimes registered against the petitioner. In addition to this, two independent witnesses on assurance of anonymity offered their statements regarding incident occurred on 16th April, 2000 and 14th of May, 2000, whereby the respective witness was beaten by the petitioner. From the above material, the detaining authority came to the conclusion that the petitioner was "bootlegger" within the meaning of Sec. 2(b) of the PASA Act. The detaining authority reached to the satisfaction that the activities of the detenu was hazardous to the public health. Detaining authority also reached to the conclusion that the petitioner was a hardened criminal and head strong person and due to fear, no body was prepared to give statement against her. The detaining authority came to the conclusion that there was no other alternative remedy available to the authority except to detain the petitioner under the PASA Act.

3. Learned Advocate Mr.MIG Mansuri on behalf of learned Advocate Mr. R.R. Marshall was heard on behalf of petitioner while learned AGP Mr. Udai Bhatt was heard for respondents.

4. Number of contentions were raised on behalf of the petitioner to challenge the grounds of detention. From the rival contentions raised, and scrutinising the record, it clearly appears that this petition can be disposed of on the ground of non-application of mind by the detaining authority and thereby the order of detention is vitiated. As per the facts mentioned in both the above crimes registered against the petitioner, she was released on bail. The detaining authority after considering the material available with him, reached to the conclusion that though the petitioner was released on bail but the petitioner was likely to continue her

bootlegging activities during bail also. The established principle of law is in detention case, the detaining authority should consider less drastic remedy available to him but in the present case it clearly appears that this aspect is not taken into consideration by the detaining authority. In ZUBEDABIBI RASIDKHAN PATHAN vs. STATE OF GUJARAT, reported in 1995 (2) GLR 1134, the court observed that there was non-consideration on the part of the detaining authority for cancelling the bail under Sec. 437(5) of the Cr.P.C., and on this ground the said detention order came to be quashed and set aside. This view is fortified again by the Division Bench of this Court in Letters Patent Appeal No. 1056 of 1999, which is decided on 15th of September, 1999.

4. In this case, the non application of mind by the detaining authority clearly emerges qua facts of the case. No where it is considered by the detaining authority that any action was taken to get the bail cancelled granted to the petitioner. This reveals clearly the non-application of mind by the detaining authority and, therefore, the order passed by the detaining authority is vitiated and is required to be quashed and set aside.

5. In view of the above discussion, this petition is allowed. The detention order passed by the Police Commissioner, Surat City, on 29th June, 2000, is ordered to be quashed and set aside. Petitioner - Smt. Sudhaben @ Salamaben w/o Babu Imamuddin Shaikh is ordered to be set at liberty forthwith if she is not required to be detained for any other purpose. Rule is made absolute.

(J.R. Vora, J.)

p.n.nair